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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,770	04/13/2001	Takeshi Yukitake	JEL-29186C-RE-DIV2	4228

7590 11/24/2004

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EXAMINER
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LEE, RICHARD J

ART UNIT	PAPER NUMBER
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2613

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/833,770

**Applicant(s)**

YUKITAKE ET AL.

**Examiner**

Richard Lee

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

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1. The request filed on September 15, 2004 for a Request for Continued Examination (RCE) is acceptable and a RCE has been established. An action on the RCE follows.
2. The Statement Under 37 CFR 3.73(b) and Assent of Assignee filed on September 24, 2004 are proper and have been recorded.
3. It is noted that claim 3 as submitted in the amendment filed September 24, 2004 is not in compliance with 37 CFR 1.173 (b) and (d). It is improper to draw lines through text when deleting claim features, as shown in the amended claim 3 of September 24, 2004. Bracketings and underlinings should be used, as shown in the previous amended claim of November 23, 2003. The applicants are required to submit claim 3 in proper format for entry in response to this Office Action.
4. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

It is to be noted again that the reissue declaration as filed is defective since it is a duplicate of that filed in parent case 09/559,627. The error(s) set forth and corrected in the present reissue application cannot be the same error(s) being corrected in the parent reissue application 09/559,627. The present reissue declaration must provide/state new error(s) for correction. By having the same error in multiple reissue applications, this violates 35 U.S.C. 251.

Upon further review of the original declaration filed April 13, 2001, it appears that numerous other errors exist. The filing date of July 20, 1994 for serial number 09/559,627 as indicated in the declaration filed April 13, 2001 is incorrect. The correct filing date is April 27, 2000. In addition, the declaration makes reference to the specification filed April 27, 2000, but

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without reference to any corresponding application. The applicants are advised to carefully review the declaration to ensure that the new supplemental declaration to be filed does not include the same errors or any other potential error(s) that the Examiner may have overlooked.

A supplemental reissue declaration was submitted in the after Final amendment filed July 20, 2004. The supplemental reissue declaration of July 20, 2004 is improper and was not entered since the errors relied upon as the basis for reissue as stated do not reflect any of the recited claims (see Advisory Action of September 2, 2004).

At page 11 of the amendment filed September 24, 2004, the applicants cited MPEP 1444 to "telephone the applicant and request the submission of the supplemental oath/declaration by fax" if the same is not filed when the Examiner takes up the application of examination. Under MPEP 1444, it states that "the examiner is encouraged to telephone the applicant and request the submission" and if circumstances do not permit making a telephone call, then the examiner should issue an Office Action. Due to compact prosecution and time constraints, the Examiner regrets that a telephone call cannot be made to the applicants' representative to correct the defect, and consistent with MPEP 1444 the present Office Action is submitted to the applicants. It is strongly advised for the applicants to submit any required communication to the Office in a timely manner, instead of waiting for a call from the Examiner in order to prevent delays in prosecution.

5. Claims 3-9 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

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6. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communications intended for entry)

(for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Lee whose telephone number is (703) 308-6612. The Examiner can normally be reached on Monday to Friday from 8:00 a.m. to 5:30 p.m, with alternate Fridays off.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group customer service whose telephone number is (703) 306-0377.

  
RICHARD LEE  
PRIMARY EXAMINER

Richard Lee/rl 

11/23/04